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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

17 Cung Le, Nathan Quarry, Jon Fitch, Brandon
18 Vera, Luis Javier Vazquez, and Kyle
19 Kingsbury on behalf of themselves and all
others similarly situated,

20 Plaintiffs,
21 v.

22 Zuffa, LLC, d/b/a Ultimate Fighting
Championship and UFC,

23 Defendant.

Case No.: 2:15-cv-01045-RFB-(PAL)

**ZUFFA, LLC'S MOTION TO SEAL
PORTIONS OF PLAINTIFFS'
OPPOSITION TO ZUFFA'S MOTION
TO SEAL**

1 Pursuant to the Stipulated Protective Order governing confidentiality of documents
 2 entered by the Court on February 10, 2016, ECF No. 217 (“Protective Order”) and Rules 5.2 and
 3 26(c) of the Federal Rules of Civil Procedure, Defendant Zuffa, LLC (“Zuffa”) respectfully
 4 requests that the Court order the Clerk of the Court to file under seal: (1) portions of Plaintiffs’
 5 Opposition to Zuffa, LLC’s Motion to Seal Portions of Plaintiffs’ Reply Brief in Support of
 6 Motion to Challenge Work Product (ECF No. 307) (“Plaintiffs’ Opposition”) and (2) portions of
 7 Exhibit 2 to the Matthew S. Weiler Declaration in Support of Plaintiffs’ Opposition to Zuffa,
 8 LLC’s Motion to Seal (ECF No. 307-3) (the “Weiler Declaration”). This motion is accompanied
 9 by the Declaration of Stacey K. Grigsby in Support of Zuffa, LLC’s Motion to Seal Portions of
 10 Plaintiffs’ Opposition to Zuffa’s Motion to Seal.

11 The Protective Order in this case provides for the filing of documents under seal where
 12 portions or the entirety of the document contain Confidential or Highly Confidential Information.
 13 ECF No. 217, ¶ 14.3. In addition, “[c]ourts generally accept attorney-client privilege and the
 14 work-product doctrine as a ‘compelling reason’ justifying a motion to seal.” *Hanson v. Wells*
 15 *Fargo Home Mortg., Inc.*, No. C13-0939JLR, 2013 WL 5674997, at *3 (W.D. Wash. Oct. 17,
 16 2013) (citation omitted); *see also Asdale v. Int’l Game Tech.*, No. 3:04-cv-703-RAM, 2010 WL
 17 2161930, at *5 (D. Nev. May 28, 2010) (accepting attorney-client privilege and the work-product
 18 doctrine as both good cause and a compelling reason to seal nondispositive and dispositive
 19 motions respectively); *JL Beverage Co., LLC v. Beam, Inc.*, No. 2:11-cv-00417-MMD-CWH,
 20 2014 WL 5017862, at *3 (D. Nev. Oct. 7, 2014) (sealing portions of a motion and certain exhibits
 21 “to protect against disclosure of attorney-client privilege and attorney work-product
 22 information”). Due to the nature of Plaintiffs’ challenge, portions of Plaintiffs’ Opposition
 23 contain references to Zuffa’s outside counsel’s work product, including thought processes and
 24 litigation strategy. Although some of the information in Plaintiffs’ Opposition comes from public
 25 sources or information that is publicly known, the reference to this information in the context of
 26 Plaintiffs’ Opposition would disclose attorney work product. For example, publication of the
 27 litigation that Zuffa’s counsel was anticipating at the time that Zuffa’s counsel commissioned the
 28

1 Mercer project would disclose part of its thought processes and litigation strategy to which the
 2 public would ordinarily not have access.

3 Specifically, Zuffa seeks to seal the following information or exhibits:

4 The following portions of Plaintiffs' 5 Opposition: Page 5:20-25, Page 6:1 and fn.6 6 at Line 22, Page 7:2-6	These portions of Plaintiffs' Opposition contain references to Zuffa's outside counsel's work product and/or reflect confidential information under the Protective Order.
7 Exhibit 2 to the Weiler Declaration sentence two.	This sentence contains references to Zuffa's outside counsel's work product and/or reflect confidential information under the Protective Order.

9 While Zuffa recognizes the importance of access to public documents, the presumption of
 10 public access to court filings may be overcome by a showing of good cause under Rule 26(c) for
 11 sealing requests that do not relate to dispositive motions. *See Pintos v. Pacific Creditors Ass'n*,
 12 605 F.3d 665, 678 (9th Cir. 2010); *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179
 13 (9th Cir. 2006). The Court has "broad latitude" under Rule 26(c) "to prevent disclosure of
 14 materials for many types of information, including, *but not limited to*, trade secrets or other
 15 confidential research, development, or commercial information." *Phillips v. General Motors*
 16 *Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (citation omitted). Courts also have the ability to seal
 17 attorney-client privilege or work product information. *See Asdale*, 2010 WL 2161930, at *5. In
 18 light of the public interest, Zuffa has narrowly tailored its request by only seeking to seal portions
 19 of the exhibit and the portions of Plaintiffs' Opposition with confidential information or that
 20 implicate the work product doctrine. Accordingly, the request to seal is narrowly tailored. A
 21 "particularized showing under the good cause standard of Rule 26(c) will suffice to warrant
 22 preserving the secrecy of sealed discovery material attached to non-dispositive motions."
 23 *Kamakana*, 447 F.3d at 1180 (citations and internal quotation marks omitted).

24 There is good cause to seal the designated portions of Plaintiffs' Opposition and Exhibit 2
 25 that contain Zuffa's outside counsel's work product. Although some of the information is public,
 26 such as the filing of a specific lawsuit, this information contains reference to the anticipated
 27 litigation that led to the creation of the work-product documents. Other courts have found such
 28 information worthy of protection. *Garcia v. City of El Centro*, 214 F.R.D. 587, 591 (S.D. Cal.

1 2003) (finding the work product doctrine prevents the disclosure of underlying facts where the
2 facts “inherently reveal the attorney’s mental impression”).

3 Zuffa respectfully requests that the designated portions of Plaintiffs’ Opposition and the
4 designated portions of Exhibit 2 to the Weiler Declaration be permitted to be filed under seal.

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6 Dated: October 17, 2016

BOIES, SCHILLER & FLEXNER LLP

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8 By: /s/ Stacey K. Grigsby
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Zuffa, LLC's Motion to Seal Portions of Plaintiffs' Opposition to Zuffa's Motion to Seal was served on the 17th day of October, 2016 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Michael Kim
An Employee of Boies, Schiller & Flexner